source, and whether confusion as to *goods* rather than confusion as to *source* is the test of unfair competition based upon the copying of such unpatented design.

The petition in the *West Point Manufacturing Co.* v. *Detroit Stamping Co.* case is as a result of a negative answer to such questions by the decision of the Court of Appeals for the Sixth Circuit in that case; whereas the petition in this case is as a result of an affirmative answer to such questions by the decision of the Court of Appeals of the Second Circuit in this case.

Where, in separate cases, substantially the same question is presented for determination, this court has in the past allowed such petitions.* In the instant case not only are the above referred to questions presented by such petitions substantially the same but also there exists as clearly shown by petitioner's petition a direct conflict between the decision of the Court of Appeals (2nd) in this case and that of the Court of Appeals (6th) in *West Point Mfg. Co.* v. *Detroit Stamping Co.*

For the above reasons in addition to those heretofore assigned by petitioners, it is respectfully submitted that

* Illustrative cases in which this was done are: *Phelps Dodge Corporation* v. *National Labor Relations Board* and *Continental Oil Co.* v. *National Labor Relations Board*, Nos. 387 and 413 respectively; *Consolidated Rock Products Co.* v. *Du Bois*, and *Badgley et al.* v. *Du Bois*, Nos. 400 and 444 respectively; *Guggenheim* v. *Rasquin*, and *Powers* v. *Commissioners*, Nos. 92 and 486, respectively; *Helvering* v. *Oregon Mutual Life Insurance Co.* and *Helvering* v. *Pan-American Life Insurance Co.*, Nos. 564 and 264, respectively; *Helvering* v. *Janney* and *Gaines et al.* v. *Helvering*, Nos. 36 and 113 respectively; *Great Atlantic & Pacific Tea Co.* v. *Super Market Equipment Corp.*, and *Crest Specialty* v. *David C. Trager, d/b/a Topic Toys*, Nos. 32 and 446, respectively.

NOTE: In the *Great Atlantic & Pacific Tea Co.* case *supra* the question presented was whether the Court of Appeals for the 6th Circuit had applied the correct criteria to invention. In the *Crest Specialty Co.* case *supra* the petition for Writ of Certiorari presented substantially the same question and such petition was allowed.

the petition for writ of certiorari as prayed for by the petitioner herein should be granted.

Respectfully submitted,

MASTERCRAFTERS CLOCK & RADIO CO.,
Petitioner,
By CLARENCE E. THREEDY,
EDWARD C. THREEDY,
HARRY MEISNERE,
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